

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of)	
)	
McKinney Crushing)	Docket No. CAA-6-014-99
Company, Inc.)	
)	
Respondent)	

ORDER GRANTING MOTION FOR DEPOSITIONS

On June 21, 2000, McKinney Crushing, Inc., ("McKinney" or the "Respondent"), filed a motion for additional discovery requesting leave to take the depositions of three employees of the Region 6 Office of the United States Environmental Protection Agency (the "Region" or the "Complainant"). McKinney desires to depose Gerald Mokry, the person who conducted the inspection of Respondent's facility that led to this proceeding; Raymond Magyar, the person who calculated the proposed penalty; and Donna Ascenzi, the others' supervisor, who approved this enforcement action.

In this proceeding, the Region has charged McKinney with five violations of the Clean Air Act, and of the Texas State Implementation Plan of the Act, at its rock crushing facility located near Able Springs, Kaufman County, Texas. The Complaint seeks assessment of a civil penalty of \$160,000 against Respondent for these alleged violations. The parties have filed prehearing exchanges of proposed evidence. Messrs. Mokry and Magyar are listed as intended witnesses in the Region's prehearing exchange. The hearing is scheduled to be held on September 12-13, 2000, in Greenville, Texas.

The standards governing motions for additional discovery and for depositions are set forth in the EPA's Consolidated Rules of Practice at 40 CFR §22.19(e). However, in this case it is not necessary to analyze Respondent's motion in accord with those standards. The Region has not filed any response to McKinney's motion to take the depositions. Under the rules, a party who fails to timely respond to a motion "waives any objection to the granting of the motion." 40 CFR §22.16(b). The Respondent's motion is sufficient, in the absence of any opposition, to support granting leave to take depositions of the key witnesses and Region personnel who inspected Respondent's facility and determined to take this enforcement action. Therefore, Respondent's motion will be granted in accord with the Order below.

Order

The Region is ordered to make Gerald Mokry, Raymond Magyar, and Donna Ascenzi available at any mutually agreeable time and place in Dallas, Texas, before September 1, 2000, to give their depositions upon oral questions. No deposition may exceed 6 hours in length. The expenses of the witnesses and for recording the depositions shall be paid by the Respondent, in accord with 40 CFR §22.19(e)(4).

Andrew S. Pearlstein
Administrative Law Judge

Dated: July 20, 2000
Washington, D.C.